Co-operative Central Bank Ltd v Tan Nyap How

HIGH COURT (MELAKA) — ORIGINATING SUMMONS NO 24-69-1995
AUGUSTINE PAUL JC
27 MARCH 1997

Civil Procedure *— Costs — Taxation — Getting-up fee — Review of decision of registrar — When court can interfere with decision of registrar — Whether registrar had considered relevant materials — Whether sufficient materials had been put before registrar — Rules of the High Court 1980 O 59 App 1 Pt IV item 26*

This was an application by the plaintiff for an order to review the amount allowed by the senior assistant registrar ('the SAR') in a bill of costs in relation to item 26 Pt IV App 1 of O 59 of the Rules of the High Court 1980 ('the RHC 1980'). The taxation proceedings arose out of an originating summons in relation to foreclosure proceedings. The defendant entered appearance and the summons was subsequently fixed for hearing. The summons was however not heard. Subsequently, both parties agreed by consent that the originating summons was to be struck off with liberty to file afresh with a further order that the plaintiff was to pay the defendant costs. The defendant filed his bill of costs and the item in dispute was item 26 for which the defendant had claimed a sum of RM24,000. Item 26 of the bill of costs was in relation to the taking of instructions on the originating summons and the general getting up of the case. The SAR taxed off RM16,000 and allowed a sum of RM8,000 under item 26. The plaintiff, in accordance with O 59 r 34(1) of the RHC 1980, applied for the award to be reviewed by the SAR who then confirmed the award. The plaintiff applied to the judge to review the award pursuant to O 59 r 36(1) of the RHC, contending that the amount was too high. The defendant however argued that since the objection of the plaintiff related to quantum, it should not be allowed.

Held, allowing the plaintiff's application:

(1) In taxation review proceedings, the court would have no jurisdiction to interfere with the discretion of the registrar on the issue of quantum unless it could be demonstrated that he had erred on a question of principle or had failed to take into account some relevant consideration (see p 573E–F); *Chin Cham Sen v Foo Chee Sang & Anor* [1952] MLJ 99 and *United Malayan Banking Corp v Syarikat Perumahan Luas Sdn Bhd* [1991] 3 MLJ 181 followed.

(2) Before discretion could be exercised, sufficient materials must be placed before the decision-maker to enable him to exercise the discretion (see p 574A–B); *Liaw Kwai Wah & Anor v PP* [1987] 2 MLJ 69 followed.

(3) The note to item 26 Pt IV App 1 and para 1(2) Pt X App 1 of O 59 of the RHC provided the basis for making the discretionary award under item 26. They identified the materials which must

be considered by the registrar in exercising his discretion. The registrar would be able to consider the materials only if they were placed before him in the proceedings in which the award was sought. Thus full particulars of the work done in respect of instructions for trial must be set out in the bill of costs to enable the registrar to settle the quantum of the charges (see pp 575H–576A); *Grant v Australian Knitting Mills* [1937] SASR 113 and *Slingsby v Attorney General* [1918] P 236 followed. The burden was on the party bringing in the bill of costs and claiming to be allowed the amount charged therein to show that the amount was fair and reasonable and ought to be allowed (see p 576F).

(4) Failure to consider matters which ought to have been taken into account would mean that the registrar had erred in law and that the court could review the exercise of the discretion. In this case the SAR had not considered all the matters stipulated in the note to item 26 and the circumstances as described in para 1(2). The amount awarded by the SAR therefore was based on insufficient particulars and amounted to an error of principle (see p 569G–H); *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1993] 1 SLR 185 and *Slingsby v Attorney General* [1918] P 236 followed.

(5) The lack of particulars also precluded the court from amending the registrar's certificate in order to make a lawful determination. Thus the proper order would be to refer the matter back to the registrar to review his taxation for item 26 upon the defendant submitting a fresh bill of costs with particulars (see p 577D).

[**Bahasa Malaysia summary**

Ini merupakan suatu permohonan oleh plaintif bagi perintah kajian semula amaun yang dibenarkan oleh penolong kanan pendaftar ('PKP') dalam suatu bil kos berkaitan dengan butiran 26, Bah IV, Lampiran 1, A 59 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT 1980'). Prosiding penetapan telah timbul akibat saman pemula berkenaan dengan prosiding halang tebus. Defendan telah memasukkan kehadirannya dan saman telah ditetapkan untuk perbicaraan. Walau bagaimanapun, saman tersebut tidak didengar. Selepas itu, kedua-dua pihak bersetuju membatalkan saman pemula tersebut dengan kebebasan untuk memfailkan semula dan dengan perintah lanjut bahawa plaintif membayar kos defendan. Defendan telah memfailkan bil kos dan butiran yang dipertikaikan adalah butiran 26 atas mana defendan telah menuntut RM24,000. Butiran 26 adalah berkenaan dengan pengambilan arahan untuk saman pemula dan penyediaan am untuk kes itu. PKP telah menolak RM16,000 dan membenarkan RM8,000 bagi butiran 26. Plaintif, berdasarkan A 59 k 34(1) KMT 1980, telah memohon supaya PKP mengkaji semula award tersebut tetapi PKP kemudiannya mengesahkan award tersebut. Plaintif telah memohon kepada hakim untuk mengkaji semula award itu menurut A 59 k 36(1) KMT dan berhujah bahawa amaun tersebut

adalah terlalu tinggi. Defendan pula berhujah bahawa oleh kerana bantahan plaintif adalah berkaitan dengan kuantum, ianya tidak patut dibenarkan. A

Diputuskan, membenarkan permohonan plaintif:

(1) Dalam prosiding kajian semula penetapan, mahkamah tidak ada bidang kuasa untuk mengganggu budi bicara pendaftar mengenai isu kuantum kecuali bila ia boleh ditunjukkan bahawa beliau telah terkhilaf atas persoalan prinsip ataupun gagal mempertimbangkan perkara yang relevan (lihat ms 573E–F); *Chin Cham Sen v Foo Chee Sang & Anor* [1952] MLJ 99 dan *United Malayan Banking Corp v Syarikat Perumahan Luas Sdn Bhd* [1991] 3 MLJ 181 diikut. B C

(2) Sebelum budi bicara boleh dilaksanakan, material yang mencukupi patut dikemukakan kepada pembuat keputusan untuk membolehkannya melaksanakan budi bicaranya (lihat ms 574A–B); *Liaw Kwai Wah & Anor v PP* [1987] 2 MLJ 69 diikut. D

(3) Nota kepada butiran 26, Bah IV, Lampiran 1 dan perenggan 1(2), Bah X, Lampiran 1 A 59 KMT 1980 memberikan asas untuk membuat award berdasarkan budi bicara di bawah butiran 26. Ianya mengenal pasti material yang patut dipertimbangkan oleh pendaftar ketika melaksanakan budi bicaranya. Pendaftar hanya boleh mempertimbangkan material itu jika material tersebut dikemukakan kepadanya di dalam prosiding di mana award dipohon. Oleh itu, butir-butir sepenuhnya mengenai kerja yang telah dibuat berkenaan dengan arahan untuk perbicaraan mesti dinyatakan di dalam bil kos untuk membolehkan pendaftar menyelesaikan kuantum pembayaran (lihat ms 575H–576A); *Grant v Australian Knitting Mills* [1937] SASR 113 dan *Slingsby v Attorney General* [1918] P 236 diikut. Beban terletak pada pihak yang mengemukakan bil kos dan memohon supaya diawardkan amaun yang dikenakan di dalamnya untuk menunjukkan bahawa amaun itu adalah adil dan munasabah dan patut dibenarkan (lihat ms 576F). E F G

(4) Kegagalan untuk mempertimbangkan perkara-perkara yang patut diambil kira bermakna bahawa pendaftar telah terkhilaf di sisi undang-undang dan bahawa mahkamah boleh mengkaji semula pelaksanaan budi bicara. Di dalam kes ini, PKP telah tidak mempertimbangkan semua perkara yang disenaraikan di dalam nota kepada butiran 26 dan keadaan-keadaan seperti yang diterangkan dalam perenggan 1(2). Maka amaun yang diawardkan oleh PKP adalah berasaskan butir-butir yang tidak mencukupi dan ini merupakan satu kesilapan prinsip (lihat ms 569G–H); *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1993] 1 SLR 185 dan *Slingsby v Attorney General* [1918] P 236 diikut. H I

(5) Butir-butir yang tidak mencukupi juga telah menghalang mahkamah daripada meminda sijil pendaftar untuk membuat

penentuan yang sah. Oleh itu perintah yang wajar adalah untuk merujuk kembali perkara tersebut kepada pendaftar untuk mengkaji semula penetapannya atas butiran 26 selepas defendan mengemukakan bil kos yang baru dengan butir-butir (lihat ms 577D).]

Notes

For a case on when court can interfere with the decision of the registrar, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) para 1041.

Cases referred to

Chin Cham Sen v Foo Chee Sang & Anor [1952] MLJ 99 (folld)
Grant v Australian Knitting Mills [1937] SASR 113 (folld)
Jeyaretnam Joshua Benjamin v Lee Kuan Yew [1993] 1 SLR 185 (folld)
Liaw Kwai Wah & Anor v PP [1987] 2 MLJ 69 (folld)
Pang Kok v Leong Fock Hap & Anor [1996] 4 MLJ 97 (refd)
Ratnam v Cumarasamy & Anor [1965] MLJ 228 (refd)
Reed (a debtor), Re [1979] 2 All ER 22 (refd)
Slingsby v Attorney General [1918] P 236 (folld)
United Malayan Banking Corp Bhd v Indah Sejati Sdn Bhd [1992] 1 AMR 77 (refd)
United Malayan Banking Corp v Syarikat Perumahan Luas Sdn Bhd [1991] 3 MLJ 181 (folld)
Vasudevan v T Damodaran & Anor [1981] 2 MLJ 150 (refd)

Legislation referred to

Rules of the High Court 1980 O 59 Appendix 1 Pt IV items 26 & 27, O 59 Appendix X Pt X para 1(2), O 59 r 31(2), 34(1), 35(3), r 36(1), O 70 r 39

SK Charanjit (*Kumar Jaspal Quah & Aishah*) for the plaintiff.
Yau Jiok Hua (*Yau Jiok Hua & Co*) for the defendant.

Augustine Paul JC: This is an application by the plaintiff for an order to review the amount allowed by the learned senior assistant registrar ('the SAR') in a bill of costs in relation to item 26 Pt IV Appendix 1 of O 59 of the Rules of the High Court 1980 ('the RHC 1980').

The taxation proceedings before the SAR arose out of an originating summons with a supporting affidavit filed by the plaintiff on 20 March 1995 praying for an order of public auction of a piece of land belonging to the defendant. The defendant entered appearance on 6 June 1995 and filed an affidavit in reply on 20 July 1995. The plaintiff filed another affidavit on 26 July 1995 confirming the final amount due and a further affidavit on 17 October 1995 in reply to the affidavit affirmed by the defendant. The summons was fixed for hearing on 27 July 1995. Upon a preliminary objection taken by the defendant, it was adjourned to

17 October 1995 for hearing in open court. On that day, it was refixed for hearing on 16 February 1996. The summons was however not heard on that day. On 14 March 1996, the plaintiff filed a notice of discontinuance in respect of the summons filed by him. This prompted the defendant to apply for an order for costs as the plaintiff had discontinued the action without leave of court. This application was called up on 25 April 1996 and was fixed for hearing on 9 May 1996. On the hearing of the application on that day, learned counsel for the defendant applied for the originating summons to be dismissed saying that he wished to withdraw his own application. This peculiar course of events was however put to an end when both parties agreed by consent that the originating summons was to be struck off with liberty to file afresh with a further order that the plaintiff was to pay the defendant costs.

On 19 July 1996, the defendant filed his bill of costs which came up for taxation before the SAR on 9 October 1996. The only item in dispute in the bill of costs was item 26, for which the defendant had claimed a sum of RM24,000. The particulars of the item as stated in the bill of costs read as follows:

> Mengambil arahan untuk kes Saman Pemula No 24–69 Tahun 1995 dan menimbangkan isu-isu fakta dan undang-undang dan mencari autoriti-autoriti.

After listening to the arguments of both counsel, the SAR taxed off RM16,000 and allowed a sum of RM8,000 under this head. On 15 October 1996, the plaintiff, being dissatisfied with the amount awarded, applied for the award to be reviewed by the SAR in accordance with O 59 r 34(1) of the RHC 1980.

The grounds of objection of the plaintiff as stated in the application read as follows:

> Adalah dihujahkan bahawa penolong kanan pendaftar telah terkhilaf dalam memutuskan bahawa kerja yang dibuat adalah sewajar dengan kos yang dibenarkan apabila hanya satu isu dikemukakan iaitu sama ada plaintif mesti mengisukan satu notis sebelum mengisukan Borang 16D. Perkara ini telah diputuskan dalam Kes Saman Pemula No 24–68–95 di mana RM5,771.58 telah diberi oleh penolong kanan pendaftar. Oleh itu kes ini tidak pernah dibicarakan kerana ia telah ditarik balik oleh plaintif. Tambahan bagi isu-isu yang dibangkitkan dalam satu-satunya afidavit defendan bukanlah isu undang-undang yang baru atau sukar. Ini merupakan kes yang terus-terang dan mudah (lihat *Canopee Investment Pte Ltd & Ors v Landmarks Holdings Bhd & Ors* [1990] 1 MLJ 292).

Upon reviewing the award on 15 November 1996, the SAR confirmed it. On 25 November 1996, the plaintiff, in accordance with O 59 r 35(3) of the RHC 1980, requested the reasons for the SAR's decision on the review and applied to the judge to review the award pursuant to O 59 r 36(1).

In her grounds of decision, the SAR said that she confirmed the award that she had made, stating that:

(i) the defence must be considered to have done research and preparation for the trial even though the summons had been withdrawn as it had

already been fixed for trial (*Pang Kok v Leong Fock Hap & Anor* [1996] 4 MLJ 97);

(ii) the value of the subject matter was about RM1m and the value of the subject matter in Originating Summons No 24–68–95 was only RM200,000; and

(iii) a certain amount of skill and knowledge was required from an advocate and solicitor in foreclosure proceedings (*United Malayan Banking Corp Bhd v Indah Sejati Sdn Bhd* [1992] 1 AMR 77).

Before me, learned counsel for the plaintiff contended that though the defendant was entitled to an award for getting up, the amount awarded was too high. He said that the case did not involve any new issue or special skill and that there was nothing complicated in foreclosure proceedings. He said that the defendant did not prepare any bundle of authorities or documents and added that a reasonable award should be in the sum of RM1,500. In his reply, learned counsel for the defendant contended that as the objection of the plaintiff related only to quantum, it should not be allowed. He conceded to an observation made by me that item 26 in the bill of costs did not specify the relevant particulars.

It is settled law that in taxation review proceedings, this court will have no jurisdiction to interfere with the discretion of a registrar on the issue of quantum unless it can be demonstrated that he had erred on a question of principle or had failed to consider some relevant consideration (see *United Malayan Banking Corp v Syarikat Perumahan Luas Sdn Bhd* [1991] 3 MLJ 181). In *Chin Cham Sen v Foo Chee Sang & Anor* [1952] MLJ 99, Thomson J (as he then was) said at p 100:

> It is well settled in England that as a general rule the court will not interfere with the discretion of a taxing officer upon a mere question of quantum if the taxing officer has exercised his discretion after considering all the circumstances and if no question of principle arises.

There are exceptional cases where the court had interfered on quantum where it was apparent from the size thereof that the taxing master must have had gone wrong in principle. In *Slingsby v Attorney General* [1918] P 236, Swinfen Eady LJ said at p 239:

> The decision of the taxing master is not absolutely final even on a question of quantum. For instance, a large sum might be allowed, but from the very fact of the amount the court might see that the master, in arriving at so large a sum, must have acted on a wrong principle or have taken something into consideration which he ought not to have done. It doubtlessly requires an exceptional case to call for the interference of the court, but exceptional cases do occasionally arise.

The award for the item in dispute, which is one of the items for which an award is made at the discretion of the registrar, is described in item 26 as follows:

> Instructions for trial or hearing of any cause or matter, whatever the mode of trial or hearing.

It is trite law that before a discretion can be exercised, sufficient materials must be placed before the decision-maker to enable him to exercise the discretion. As Abdul Hamid CJ (Malaya) (as he then was) succinctly stated in *Liaw Kwai Wah & Anor v PP* [1987] 2 MLJ 69, a discretion must be exercised judicially and within the limits and in the spirit of the legislation concerned. His Lordship then added at p 70:

> 'Discretion' is defined in 2 *Words and Phrases Legally Defined* (2nd Ed), at p 82 to read:
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> > '"Discretion" means that when it is said that something is to be done within the discretion of the authorities then that something is to be done according to the rules of reason and justice, and not according to private opinion (*Rooke's Case* (1598) 5 Co Rep 996); according to law, and not humour. It is to be, not arbitrary, vague, but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself: *Wilson v Rastall* (1792) 4 Term Rep at p 757 (*Sharp v Wakefield* (1891) AC 173 (HL), per Lord Halsbury LC at p 179).'

Maxwell on The Interpretation of Statutes (12th Ed) at pp 147–148, under the heading 'The exercise of discretion must be reasonable', states that:

> Even though an act done is ostensibly in execution of a statutory power and within its letter, it will nevertheless be held not to come within the power if done otherwise than honestly and within the spirit of the enactment. A discretion is to be 'regulated according to known rules of law' (*Lee v Bude & Rorrington Junction Ry Co* (1871) LR 6 CP 576, per Willes J at pp 580–581), and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet ... . 'It is true,' said Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 at p 229), 'the discretion must be exercised reasonably'.

However, it is now becoming increasingly common for legislators not only to create a discretion but also to set out at the same time guidelines for the exercise of the discretion. These guidelines must be followed. With regard to the exercise of the discretion under item 26, certain matters and guidelines have been expressly formulated by the note to items 26 and 27 of Pt IV App 1 of O 59 (note to item 26) and para 1(2) of Pt X App 1 of O 59 (para 1(2)) respectively for consideration by the registrar. They read as follows:

> NOTE TO ITEM 26
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> *Note to items 26 and 27*
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> These items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including:
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> (a) taking instructions to sue, defend, counterclaim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act or claim in a reference under O 70 r 39;
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> (b) considering the facts and law;
>
> (c) attending on and corresponding with client;

(d) interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence;

(e) arranging to obtain reports or advice from experts and plans, photographs and models;

(f) making search in a government office and elsewhere for relevant documents;

(g) inspecting any property or place material to the proceedings;

(h) perusing pleadings, affidavits and other relevant documents;

(i) where the cause or matter does not proceed to trial or hearing, work done in connection with the negotiation of a settlement; and

(j) the general care and conduct of the proceedings.

PARAGRAPH 1

Discretionary costs

(1) Where in the foregoing provisions of this Appendix there is entered in the second column against any item specified in the first column either an upper and lower sum of money or the word 'discretionary', the amount of costs to be allowed in respect of that items shall (subject to any order of the court fixing the costs to be allowed) be in the discretion of the registrar, within the limits of the sums so entered, if any.

(2) In exercising his discretion under this paragraph or under r 31(2) in relation to any item, the registrar shall have regard to all relevant circumstances, and in particular to:

(a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;

(c) the number and importance of the documents (however brief) prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the importance of the cause or matter to the client;

(f) where money or property is involved, its amount or value; and

(g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items had reduced the work which would otherwise have been necessary in relation to the item in question.

In my opinion, therefore, the note to item 26 and para 1(2) provide the basis for making the discretionary award under item 26. They identify the materials which must be considered by the registrar in exercising his discretion. The registrar would be able to consider the materials only if they are placed before him in the proceedings in which the award is sought. Thus full particulars of the work done in respect of instructions for trial must be set out in the bill of costs to enable the registrar to settle the quantum of the charges (see *Grant v Australian Knitting Mills* [1937] SASR

113). In this regard, Swinfen Eady LJ said in *Slingsby v Attorney General* [1918] P 236 at pp 240–241: A

> In my opinion, the heading 'Instructions for brief' is intended to cover those items, the nature of which is thus stated by Master King in his book on *Costs on the High Court Scale* at pp 37–38:
>
> > 'A summary statement in the bill carried in for taxation of the details of the matters to which regard is to be had under this item' B
>
> that is, under the item 'Instructions for brief — 'Greatly facilitates the task of arriving at a proper allowance.' Then he refers to *Hill v Peel* (1870) LR 5 CP 172 and states that:
>
> > 'The length of the documents perused (in cases in which perusal has not previously been charged), the names of the witnesses who have been attended, the places to which journeys have been made, with the time occupied in each, and the amount of the travelling expenses, should be stated.' C
>
> If those details are given in the bill it enables the Master to form a considered judgment as to the sum which is proper to be allowed under the heading 'Instructions for brief'. D

His Lordship added at p 244 that details of charges should be given with the sums charged for the various matters upon which the registrar should exercise his discretion. On the burden of proof in taxation proceedings, his Lordship said at p 243: E

> ... the burden is on the parties bringing in the bill of costs and claiming to be allowed the amount charged therein to show that the amount is fair and reasonable and ought be allowed. It is not for the registrar to allow the amount merely because it has been paid, or because the other side have not produced evidence to show that the charge is excessive. F

The burden on the party bringing in the bill of costs re-emphasizes the need for him to set out the full particulars with regard to the claim under item 26.

Failure to consider matters that ought to be taken into account would mean that the registrar has erred in law and that this court can G review the exercise of the discretion. In this regard, I refer to the decision of the Privy Council in *Ratnam v Cumarasamy & Anor* [1965] MLJ 228 where it was held that an appellate court will not interfere with the discretion exercised by a lower court unless it is clearly satisfied that the discretion had been exercised in a contrary way or that there has been a miscarriage of justice. The Federal Court in *Vasudevan v T Damodaran & Anor* [1981] 2 MLJ 150 referred to *Re Reed (a debtor)* [1979] 2 All ER 22, where Goulding J said at p 25: H

> ... the duties of an appellate court in such a matter as this are, in my judgment, confined to those normally exercisable where the lower court has a discretion, that is to say, we are not justified in setting aside or varying an order simply because we may think we might have come to a different conclusion ourselves on similar material. We can only interfere if either we can see that the court below has applied a wrong principle or has taken into I

A account matters that are in law irrelevant, or has excluded matters that it ought to have taken into account, or otherwise that no court, properly instructing itself in the law, could have come to the conclusion which in fact was arrived at.

The gist of the grounds of decision of the SAR that I have referred to in the B earlier part of the judgment shows that she had not considered all the matters as stipulated in the note to item 26 and the circumstances as described in para 1(2). This is partly due to the fact that the defendant had not given sufficient particulars of his claim under item 26 as required. I do realize that not all the matters enumerated in the note to item 26 and the circumstances detailed in para 1(2) may be relevant in a particular case C and in consequence thereof, the party bringing in the bill of costs may not have given particulars of them. This ought to be reflected in the registrar's grounds of decision to indicate why some of the stipulated matters have not been considered. This was not done in this case. Where they are relevant, it must be made apparent by the registrar that he had considered D them (see *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1993] 1 SLR 185). In the circumstances, the amount awarded by the SAR was based on insufficient particulars and amounted to an error of principle. The lack of particulars also precluded me from amending the registrar's certificate in order to make a lawful determination in the motion before me. Thus the proper order to be made by me is as stated by Swinfen Eady LJ in the E *Slingsby* decision at p 244 in the following terse terms:

> The proper course, therefore, will be in general terms to allow the appeal, refer the matter back to the registrar to review his taxation in respect of ... 'Instructions for Brief' ... and then for the solicitor to bring in a bill ... and as ... regards the heading 'Instructions for Brief' to give particulars of the F work he claims to have done in respect of which a lump sum is to be charged and is proper to be allowed as and for 'instructions for brief'.

This accords with O 59 r 36(5) of the RHC 1980 which reads as follows:

> On an application under this rule, the judge may make such order as the circumstances require, and in particular may order the registrar's certificate G to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the registrar for taxation.

In the upshot, I allow the application and direct the SAR to review the award made for item 26 upon the defendant submitting a fresh bill of costs with the stipulated particulars.

H *Application allowed.*

Reported by Mariette Peters-Goh

I